



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

February 14, 1996

Ms. Tracy Pounders
Assistant City Attorney
Office of the City Attorney
City of Dallas
Dallas, Texas 75201

OR96-0191

Dear Ms. Pounders:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 37987.

The City of Dallas (the "city") has received a request for records created since November 1, 1994, that relate to a proposed new sports arena in Dallas. You explain that most of the records have been the subject of previous requests and "have been made available with the exception of certain documents generated prior to June 8, 1995, that are either currently being considered by [this] office, or have previously been ruled upon." You therefore limit the scope of the present request to documents created since June 8, 1995. You have submitted various documents for our review and claim that sections 552.101, 552.105, and 552.107 except the records from required public disclosure. We address your arguments in turn.

We first address your assertion that section 552.101 of the Government Code excepts from disclosure the information labeled as Exhibit B, which consists of an environmental report on a specific tract of land. Although you claim that Exhibit B also contains "notes regarding the financial ability of third parties to participate in the Arena project," we were unable to identify those notes in Exhibit B. Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." You cite no statutory authority in conjunction with your assertion of section 552.101 and we are not aware of any law that makes the submitted information confidential. You claim that release of the environmental reports will violate the privacy of the owners of the proposed sites, and the parties identified in the financial notes.

Information may be withheld under section 552.101 in conjunction with common-law privacy only if the information is highly intimate or embarrassing *and* it is of no

legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Upon reviewing the environmental report submitted as Exhibit B, we conclude that the report does not contain highly intimate or embarrassing information. Moreover, we believe there is a legitimate public interest in this information. Therefore, you may not withhold Exhibit B under section 552.101 of the Government Code.

Next, we address your assertion that section 552.105 of the Government Code excepts Exhibit C from required public disclosure. Section 552.105 excepts from disclosure information relating to:

- (1) the location of real or personal property for a public purpose prior to public announcement of the project; or
- (2) appraisals or purchase price of real or personal property for a public purpose prior to the formal award of contracts for the property.

Section 552.105 is designed to protect a governmental body's planning and negotiating position with regard to particular transactions. Open Records Decision Nos. 564 (1990), 357 (1982), 310 (1982). Information excepted under section 552.105 that pertains to such negotiations may be excepted so long as the transaction is not complete. Open Records Decision No. 310 (1982). Because this exception extends to "information pertaining to" the location, appraisals, and purchase price of property, it may protect more than a specific appraisal report prepared for a specific piece of property. Open Records Decision No. 564 (1990) at 2. For example, this office has concluded that appraisal information about parcels of land acquired in advance of others to be acquired for the same project could be withheld where this information would harm the governmental body's negotiating position with respect to the remaining parcels. *Id.* A governmental body may withhold information "which, if released, would impair or tend to impair [its] 'planning and negotiating position in regard to particular transactions.'" Open Records Decision No. 357 (1982) at 3 (quoting Open Records Decision No. 222 (1979)).

You advise us that the city's negotiations to purchase property for the sports arena are not complete and will be impaired if the aforementioned exhibit is disclosed. We have examined the documents submitted to us for review as Exhibit C and conclude that some of the information may be withheld under section 552.105. Other information contained in Exhibit C pertains to the actual construction of the arena and negotiations with the various team owners regarding arena issues; it does not relate to the city's negotiations to purchase property for the arena. We have marked the information in Exhibit C that you may withhold under section 552.105 of the Government Code.

You also claim that section 552.107(1) of the Government Code excepts from required public disclosure information contained in Exhibit D. Section 552.107(1) excepts from disclosure

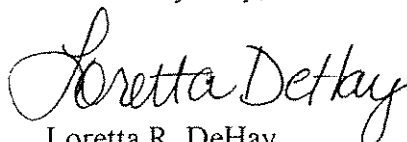
information that the attorney general or an attorney of a political subdivision is prohibited from disclosing because of a duty to the client under the Texas Rules of Civil Evidence, the Texas Rules of Criminal Evidence, or the Texas Disciplinary Rules of Professional Conduct.

Information may be withheld under section 552.107(1) only to the extent that it documents confidences of a governmental representative to its attorney or reveals the attorney's legal advice and opinions. Open Records Decision Nos. 589 (1991), 574 (1990).

You have submitted to us for review as Exhibit D a letter that provides legal advice regarding a particular issue. You explain that the document was prepared by the city's attorneys. We conclude that the document falls within the protection of section 552.107(1) of the Government Code and need not be made available to the requestor.

In summary, you must release Exhibit B, you may withhold only the marked portions of Exhibit C, and you may withhold Exhibit D in its entirety. We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Loretta R. DeHay
Assistant Attorney General
Open Records Division

LRD/ch

Ref.: ID#37987

Enclosures: submitted documents

cc: Mr. Todd J. Gillman
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(w/o enclosures)